

**FILED**

**FEB 26 2009**

**Clerk, U.S. District and  
Bankruptcy Courts**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JEFF KISSELOFF  
20 Calvin Blvd.  
New Paltz, NY 12561

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

and

U.S. DEPARTMENT OF JUSTICE,

and

JOHN DOE AGENCY 1 THROUGH  
JOHN DOE AGENCY 10

Defendants

**Case: 1:09-cv-00391**

**Assigned To : Bates, John D.**

**Assign. Date : 2/26/2009**

**Description: FOIA/Privacy Act**

FIRST COMPLAINT FOR INJUNCTIVE RELIEF

[Freedom of Information Act, 5 U.S.C. § 552, et seq.]

BACKGROUND

1. Plaintiff Jeff Kisseloff ("Kisseloff") is a journalist, author and historian. He is the author of five history books and is currently working on a book about the Alger Hiss case. He began working on the Hiss case in 1975. The following year he went to work as Hiss's legal researcher. He was instrumental

in researching and writing Hiss's petition for a Writ of Error Coram Nobis, which was filed in 1978. He is the editor of [www.algerhiss.com](http://www.algerhiss.com), a massive repository of information on the Hiss case.

2. The trial of Alger Hiss for perjury was a watershed event of Cold War America. His conviction led directly to the McCarthy Era witch hunts and was later used to justify the Vietnam War and a host of policies which painted the United States in general, and Democrats in particular, as soft on communism. Because of this lasting impact, the Hiss trial was probably the most significant political trial of the 20<sup>th</sup> century, far outstripping in long-term importance other sensational trials of the period. Whole careers were made or broken on the case. The greatest beneficiary was Congressman Richard M. Nixon, who used the case as a springboard to the White House.

3. The importance of the Hiss case is underscored by the flow of books on it which continues uninterrupted sixty years later. This spring alone, two books on the case are scheduled to be published by the prestigious Yale University Press.

4. The Hiss case Web site has had more than 170,000 hits. New evidence on the case is still coming to light on two continents. In Russia, an intelligence expert and historian maintains a Web site monitoring the latest findings from the intelligence files of the former Soviet Union.

5. The case's importance stems in part from the stature of the defendant Hiss. Hiss was a protégé of Supreme Court Justices Oliver Wendell Holmes and Felix Frankfurter. A member of the New Deal since 1933, he rose to prominence as a State Department official, serving at the Dumbarton Oaks and Yalta Conferences, and was Secretary General of the San Francisco Conference, where the United Nations was founded in 1945. He left the State Department in 1946 to become president of the Carnegie Endowment for International Peace. He was serving in that capacity when Whittaker Chambers, a senior editor for Time magazine, first publicly aired his charges before the House Committee on Un-American Activities ("HCUA") in August 1948.

6. The quest to obtain records on the Hiss case under the Freedom of Information Act ("FOIA") has been an ongoing focus of the case since the mid-1970s when Hiss himself requested all records on the case, with the idea that they all would be made publicly available. Indeed, all the documents he obtained are now on deposit at the Harvard University Law School Library. When the first documents began arriving, many were heavily redacted and others were withheld in their entirety. After Hiss filed suit, many more documents were released, with the result that some 40,000 to 50,000 pages were obtained, but many of the newly released documents were also heavily redacted.

7. These records were then used by Hiss in his coram nobis petition seeking to overturn his perjury conviction on the basis of prosecutorial misconduct. Although the courts rejected the coram nobis petition, the information uncovered under the FOIA has been cited by historians examining the case ever since. As a result of President William Jefferson Clinton's executive orders issued in the 1990s, a new FOIA suit was filed seeking to have previously redacted records released in unredacted form. Some were provided in unredacted form, without any harm occurring to those mentioned in the records, but these newly released documents constituted only a small percentage of the overall records at issue.

8. Simultaneously, Common Citizen obtained the Hiss Case Grand Jury minutes. The plaintiffs, supported by historians and others, successfully argued that the historical importance of the case successfully trumped traditional rules governing grand jury secrecy. In the meantime, other historians convinced the House of Representatives to make public all of HCUA's executive session records on the Hiss case that were at least 50 years old.

9. Despite these disclosures, Kisseloff was able to ascertain that no more than about 10 percent of all materials related to the full government holdings pertaining to the Hiss case have been released. The importance of continuing the quest

to get all Hiss case materials released is illustrated by the FOIA lawsuit which Kisseloff<sup>10</sup> filed in 2003 seeking FBI records pertaining to Hede Massing, a principal figure in the Hiss trial. Records released as a result of that lawsuit disclosed, among other things, that Massing had been a confidential informant of the FBI for nearly two years before revealing to them the information that she told at Hiss's trial, this despite repeated interrogation on the matter by the FBI. This revelation raised profound questions about the integrity of the Government's case against Hiss and the validity of his perjury conviction.

10. The actions taken<sup>11</sup> by defendants in this case have impeded the ascertainment<sup>12</sup> of the historical truth about the Hiss case. Here, plaintiff Kisseloff seeks materials pertaining to a large number of persons who figure in the Hiss case. Despite the fact that subjects of these requests are deceased and much of the responsive information is more than 50 years old, a large amount of information is being baselessly and inconsistently withheld. The absurdity of many of the FBI's redactions is exemplified in one document where the FBI has invoked privacy concerns to delete the name of Whittaker Chambers from a sentence describing the lawsuit Alger Hiss filed against him in 1948 despite the fact that (1) Chambers is dead, (2) Chambers is a public figure, and (3) the redacted information concerns

Chambers' role as a defendant in a publicly filed lawsuit. See Exhibit 1.

11. Additionally, the FBI has violated the FOIA in major ways. For example, it has defied the instructions that Kisseloff gave in his request that cross-references be processed in their entirety, instead claiming that such materials are "outside the scope" of his request or that he must submit a new request for such materials. Nor has the FBI promptly provided documents allegedly referred to other agencies. Furthermore, it has also not followed Kisseloff's instructions that ELSUR ("electronic surveillance") indices should be checked for "mentions" and "overhears," and not simply confined only to determining whether such indices indicate that the subjects were targets of such surveillance.

#### JURISDICTION AND PARTIES

12. Plaintiff Jeff Kisseloff ("Kisseloff"), a resident of the State of New York, brings this action under the Freedom of Information Act ("the FOIA"), 5 U.S.C. §552, as amended

13. Defendant Department of Justice ("Justice") is an agency of the United States and has possession and control of records requested by plaintiff which are the subject of this action.

14. Defendant Federal Bureau of Investigation ("FBI") is a component of the Department of Justice and has possession and control of records requested by plaintiff which are the subject of this action.

15. Defendants John Doe Agency #1 through John Doe Agency #10 are other agencies of the United States Government to which the FBI has or will refer documents or information responsive to plaintiff's request.

COUNT I-REQUEST FOR DOCUMENTS

16. Plaintiff realleges the allegations set forth in paragraphs 12-15 above.

17. By letter dated May 6, 2004, plaintiff submitted a request under the Freedom of Information Act, 5 U.S.C. § 552, to FBI Headquarters ("FBIHQ") for records pertaining to 81 named subjects. See Exhibit 3. Identical copies of the substance of this request were submitted by letters dated May 6, 2004, addressed to the FBI's Boston, Los Angeles, Miami, New York, Philadelphia, and Washington, D.C. field offices.

18. By letter dated September 11, 2006, plaintiff supplemented his request by providing obituaries or other proofs of death for 122 named subjects. See Exhibit 4.

19. By a series of letters addressed to plaintiff's counsel, the FBI has acknowledged many of these requests and

assigned them request numbers. Exhibit 2 is a chart which lists requests that have been acknowledged and provides the dates of acknowledgement and the assigned request numbers in Columns 2 and 3.

20. As a result of another series of letters the FBI has made determinations to deny or release information responsive to specific requests. Id., Columns 4-5.

21. With respect to letters which have denied or granted access to information, plaintiff has appealed such determinations. Id., Column 6.

22. Plaintiff has exhausted his administrative remedies with respect to all requests for which no determination of the request has been made. Plaintiff has also exhausted administrative remedies with respect to all requests where more than 20 working days have transpired since the Department of Justice received an appeal of the denial of a request.

23. Plaintiff has a legal right under the FOIA to obtain the information he seeks, and there is no legal basis for the defendants' denial of said right.

COUNT II--FEE WAIVER

24. Plaintiff realleges the allegations set forth in Paragraphs 12-15 and 22-23 above.



25. By letters dated May 6, 2004, addressed to FBI Headquarters and the FBI's Boston, Los Angeles, Miami, New York, Philadelphia, and Washington, D.C. field offices) plaintiff requested a public interest fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

26. Defendant has responded inconsistently to Kisseloff's request for a fee waiver. With respect to the J. Peters request (Request (#1084594), the FBI denied the request by letters dated July 7, 2008. However, with respect to the John Foster Dulles request (#1076029), the FBI, by letter dated August 5, 2008, granted the request. With respect to the John Abt request (1072367), the FBI in its letter of September 23, 2008, initially demanded payment of fees. Kisseloff's counsel, by letter dated October 22, 2008, submitted a supplemental showing further supporting the fee waiver application and demanding that the FBI make a determination of the fee waiver request. See Exhibit 5. The FBI subsequently granted a waiver in full by letter dated December 29, 2008.

27. With respect to the Carl Binger request (#1076022), by letter dated September 23, 2008, the FBI demanded payments of fees. By letter dated October 22, 2008, Kisseloff augmented his fee waiver showing and demanded that the FBI make a determination to grant or deny his request. No further communi-

cation regarding this request for a fee waiver has been received.

28. Plaintiff has exhausted his administrative remedies where (1) more than 20 working days have passed since the FBI received a request for a fee waiver without making a determination, and (2) where more than 20 working days have passed since the Office of Information and Privacy received an appeal of a denial of a fee waiver request or an appeal of the FBI's failure to grant or deny a fee waiver request.

29. Plaintiff is entitled to a waiver of search fees and copying costs, and there is no legal basis for the denial of said right.

WHEREFORE, Plaintiff prays that this Court:

(1) order defendants to make promptly available to plaintiff all requested information that is more than 50 years old.

(2) order defendants to provide all information that has been withheld on the grounds that it is outside the scope of the request;

(3) order that defendants search for and provide all cross-references material that has not been provided in violation of plaintiff's instruction that each cross-reference be provided in its entirety;

(4) order defendants to list each document defendants have referred to another agency or component of the defendants and provide the date of the referral, the number of pages referred, and the date of any action on the referral;

(5) order defendants to grant plaintiff a waiver of search fees and copying costs pursuant to 5 U.S.C. § 552(a)

(4)(A)(iii);

(6) order defendants to conduct a thorough search for all responsive records;

(7) order defendants to provide plaintiff a Vaughn index inventorying responsive records and itemizing and justifying withholdings;

(8) expedite this action in every way pursuant to 5 U.S.C. § 552 and 28 U.S.C. § 1657;

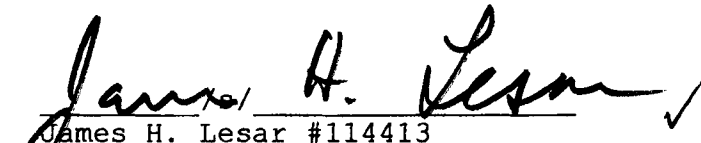
(9) order the FBI to search its ELSUR indices for "mentions" and "overhears" as well as targets of electronic surveillance;

(10) award plaintiff reasonable costs and attorney's fees as provided in 5 U.S.C. § 552(a)(4)(E) and/or 28 U.S.C. § 2412(d); and

(11) grant such other and further relief as the Court may deem just and proper.

12

Respectfully submitted,

  
James H. Lesar #114413  
1003 K Street, N.W.  
Suite 640  
Washington, D.C. 20001  
Phone: (202) 393-1921

\_\_\_\_\_/s/\_\_\_\_\_  
Julia Vorsina Greenberg  
New York Bar #388561773  
Empire State Building  
350 Fifth Avenue  
Suite 4400  
New York, N.Y. 10118  
Phone: (212) 965-9514

Counsel for Plaintiff

DATED: February 24, 2009

SECRET

Virginia, supplied with a quantity of beer and had not been returned home until 10:00 P.M. This allegation was completely refuted by two Special Agents in their testimony of January 16, 1950.

During the investigation of ALGER HISS, efforts were made by the Federal Bureau of Investigation to locate a typewriter formerly in the possession of ALGER HISS and his wife, WILKILL. This was a result of evidence offered at a pre-trial deposition hearing in connection with a civil action in Baltimore, Maryland, on November 17, 1948, in which ALGER HISS sued [redacted] charging libel and slander. At that time, [redacted] produced sixty-five pages of typewritten documents, which he alleged were copies of, or excerpts from, original State Department documents which had been made available to him by ALGER HISS for delivery to Colonel BENJAMIN B. BAKER, a superior in the Soviet espionage operations. During that investigation, the FBI Laboratory concluded that the type-writing, appearing on sixty-four of the documents in question, resembled most closely to standards for a Woodstock typewriter made in 1929.

During 1949, [redacted] was interviewed on numerous occasions regarding his knowledge of a Woodstock typewriter formerly owned by ALGER HISS. During many of those interviews, he furnished conflicting information. He first denied knowledge of the typewriter, and later furnished a signed statement reflecting that he had received a Woodstock typewriter from the HISSs at approximately the time that ALGER HISS moved from his residence on 20th Street, N.W., to 3415 Volta Place, N.W., Washington, D. C.

During the investigation to locate this typewriter, the employee was interviewed by the FBI and he denied knowledge of the typewriter until the interview of May 13, 1949, at which time he admitted that he and his brother had received a typewriter from ALGER HISS. On May 15, 1949, he further advised that subsequent to his first interview with Special Agents of the FBI concerning his knowledge of the typewriter formerly owned by ALGER HISS, he recalled that he and his brother, [redacted]

E.A.H. b.T. 1

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SECRET

Name	Request No.	Request Acknowledgement	Date of Release	Information withheld	Date of Appeal	Appeal Acknowledgment	Appeal Affirmed	Appeal Reversed	Fee Waiver Request
Abt, John	1072367		9/23/08 12/29/08	yes	1/3/09	1/23/09			Denied 9/23/08; supplemented 10/22/08; granted 12/29/08
Anderson, Walter H.	1072433	1/10/08	8/4/08	yes	8/22/08 10/22/08	10/29/08	1/26/09		
Bedacht, Max	1072434	10/10/08	11/3/08 11/7/08	yes	11/9/08				
Bentley, Elizabeth	1074834		12/4/08	yes	12/18/08	1/29/09			
Binger, Carl	1076027	11/12/08	9/8/08			10/1/08	10/30/08	partially	9/23/08, fees de-manded; 10/22/08 suppl. To request
Catlett, Claudia	1076010		2/28/08 11/2/08	yes	12/20/08				
Catlett, Raymond Sylvester	1077008	6/20/08	9/9/08	yes	9/22/08	11/12/08	12/30/08 partially	Partially	
Chambers, Esther	1072435		5/5/08	yes	6/21/08				
Collins, Henry	1072968		9/15/08	yes	9/21/08	11/10/08	12/19/08 partially	12/19/08 partially	
Dozenberg, Nicholas	1074988		2/3/09	yes	2/5/09				

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Name	Request No.	Request Acknowledgement	Date of Release	Information withheld	Date of Appeal	Appeal Acknowledgment	Appeal Affirmed	Appeal Reversed	Fee Waiver Request
Duggan, Laurence	1073521	11/19/08							
Dulles, John Foster	1076029	6/19/08	8/5/08	Yes					Waiver granted 8/5/08
Ehrlich, Evelyn	1076028	6/9/08	11/20/08	yes		1/23/09			
Feis, Herbert	1076106	7/3/08	8/25/08	yes		1/23/09			
Field, Noel	1073487		8/1/08	yes	8/26/08	11/13/08 12/9/08			
Hiss Alger	1076108	5/22/08	12/19/08 2/11/09	yes	1/23/09 2/13/09				
Hiss, Donald	1076207	5/10/28/08	11/25/08	yes	12/21/08	1/28/09			11/21/08; fees de-manded; 12/21/08; failure to determine appealed
Inslerman, Felix	1077108	10/29/08	11/21/08	yes	12/20/08	1/8/09			
Intrator, Michael	1078001		7/18/08	yes	7/25/08	12/9/08			
Kramer, Charles	1078003	10/29/08							
Krieger, Sam	1078048	6/17/08	10/27/08	yes	11/10/08	12/10/08			
Krivisky, Walter	1078049		7/11/08 10/15/08	yes	8/21/08 11/11/08	10/29/08	1/13/09		

Name	Request No.	Request Acknowledgement	Date of Release	Information withheld	Date of Appeal	Appeal Acknowledgement	Appeal Affirmed	Appeal Reversed	Fee Waiver Request
Leahy, William Daniel	1078047	10/08/08							
Levine, Isaac Don	1078011	8/22/09							
Lore, Lillian	1078845	6/30/08	8/5/2008 12/24/08	yes	8/24/08 12/31/08	10/29/08	11/10/08 partially	11/19/08 partially	
Mandel, Benjamin	1078848		9/5/08	yes	10/9/08	11/13/08	1/13/09 partially	2 pages released	
Massing, Paul	1078847	9/16/08							
McCarthy, Elizabeth R	1081558		8/8/08	yes	8/25/08	10/29/08	11/19/08		
Murray, Edith	1081559		10/27/08	yes					
Nelson, Eleanor	1085265	6/30/08							
Newcomb, Annabelle	1085266		7/18/08	yes	7/26/08	12/9/08			
Nixon, Patricia Ryan	1081807	6/16/08							
Ogins, Issac	1098086	7/16/08	8/4/08 11/7/08	yes	8/23/08	11/29/08 12/10/08	1/7/09		
Pasvolsky, Leo	1081809		11/5/08	yes	11/13/08	12/10/08			
Perlo, Victor	1084593		11/20/08	yes					
Peters, J	1084594		7/17/08						denied
Peurfoy, John	1084596	6/20/08	10/24/08	yes	11/12/08	12/10/08			



Name	Request No.	Request Acknowledgement	Date of Release	Information withheld	Date of Appeal	Appeal Acknowledgment	Appeal Affirmed	Appeal Reversed	Fee Waiver Request
Pigman, George Leroy	1085370	6/17/08	11/3/08	yes	11/9/08	12/10/08 12/19/08			
Post, Richard Howell	1085372	6/18/08	9/25/08	yes	10/11/08	11/6/08	1/26/09		
Reno, Franklin Victor	1085197	8/27/08	12/31/08	yes	1/2/09	1/23/09			
Rosen, William	1085198	9/15/08							
Roulhac, George	1085429		5/30/08	yes	6/20/08				
Rumrich, R R	1085430		5/30/08	yes	6/19/08				
Russell, Louis J	1085432		9/26/08	yes		11/6/08			
Sayre, Francis B	1096611	7/9/08	12/30/08	yes	1/14/09				
Schapiro, Meyer	1098017	7/14/08	11/6/08	yes					
Sherman, John Loomis	1098233	5/15/08							
Silverman, Abraham George	1098019	5/13/08	12/30/08	yes	1/15/09				
Spiegel, Anna Stiffman	1098062	7/23/08	10/8/08	yes					
Stripling, Robert Erastus	1098064	9/15/08	12/5/08	yes	12/17/08				
Ulanov, Alexander	1098071	8/18/08	11/26/08	yes	12/22/08	1/14/09			

Name	Request No.	Request Acknowledgement	Date of Release	Information withheld	Date of Appeal	Appeal Acknowledgement	Appeal Affirmed	Appeal Reversed	Fee Waiver Request
Ludwig, William Ullmann	1098235		9/10/08	yes	11/4/08	11/12/08	1/29/09		
Wadleigh, Henry Julian	1098075	10/29/08	12/17/08	yes	1/23/09	2/10/09			
Ware, Harold	1098077	1/14/09	1/30/09	yes	2/2/09				
Weyl, Nathaniel	1098240		1/6/09	no					
Wheeler, William A	1098242	9/4/08							
White, Harry Dexter	1098084	1/7/09							
Witt, Nathan	1098238	10/27/08	1/5/09	yes	1/13/09				
Zimmerman, David	1098080	8/18/08							

May 6, 2004

FREEDOM OF INFORMATION ACT REQUEST

Mr. David M. Hardy, Chief  
Freedom of Information/Privacy Acts  
Section  
Office of Public and Congressional Affairs  
Federal Bureau of Investigation  
Washington, D.C. 20535

Re: Alger Hiss, Whittaker Chambers, et al.

Dear Mr. Kelso:

I represent Mr. Jeff Kisseloff.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 at  
seg., Mr. Kisseloff requests all records on the following persons  
(obituaries are submitted for those persons marked by asterisk):

- \*1. John ABT, the lawyer, and Communist Party member accused by  
Whittaker Chambers;
2. Walter H. ANDERSON, a State Department official;
- \*3. Max BEDACHT, Communist Party official;
4. Elizabeth BENTLEY;
- \*5. Carl BINGER;
6. Boris BYKOV;
7. Claudia CATLETT, a onetime maid for Alger Hiss;
8. Perry M. CATLETT, son of Claudia Catlett;
9. Raymond Sylvester CATLETT;
10. Esther CHAMBERS, wife of Whittaker Chambers;
11. Whittaker Chambers;
- \*12. Henry Hill COLLINS;
13. William Edward CRANE;

Exhibit 3

- 14. Nicholas DOZENBERG;
- \*15. Laurence DUGGAN;
- \*16. John Foster DULLES;
- 17. Evelyn EHRLICH;
- \*18. Herbert FEIS;
- 18. Noel FIELD;
- 19. Sender GARLIN;
- 20. John Theodore HERRMANN;
- 21. Alger Hiss;
- \*22. Donald HISS;
- \*23. Priscilla HISS;
- \*24. Stanley HORNBECK; State Department, Far East Division;
- \*25. Charles H. HOUSTON, Washington, D.C. attorney;
- \*26. Grace HUTCHINS, novelist, roommate of Esther Chambers;
- 27. Felix INSLERMAN;
- \*28. Michael INTRATOR, friend of Whittaker Chambers;
- \*29. Alfred KOHLBERG, industrialist;
- 30. Charles KRAMER (Krivitsky);
- 31. Sam KRIEGER;
- 32. Walter G. KRIVITSKY;
- 33. Admiral William LEAHY;
- \*34. Isaac Don LEVINE;
- 35. Eunice LINCOLN, secretary to Alger Hiss;
- 36. Ira LOCKEY;
- 37. Ira LOCKEY, JR.
- \*38. Ludwig LORE, friend of Whittaker Chambers;

- 40. Mrs. Ludwig (Lillian) LORE, wife of Ludwig Lore;
- \*41. Benjamin MANDEL, HUAC investigator;
- \*42. Hedding MASSING ("see" references only);
- 43. Paul MASSING (husband of Hede Massing, Baltimore resident);
- 44. Elizabeth R. McCARTHY;
- 45. Edith MURRAY (former maid of Whittaker Chambers);
- \*46. Henry A. MURRAY (psychologist);
- 47. Eleanor NELSON (accused by Whittaker Chambers)
- 48. Annabelle NEWCOMB (former secretary to Alger Hiss);
- 49. Isaac Oggins
- \*50. Patricia Ryan NIXON (wife of President Richard Nixon);
- \*51. Daniel P. NORMAN (metallurgist who committed suicide in the 1950s or 1960s);
- \*52. Leo PASVOLSKY (former State Department official);
- \*53. Victor PERLO (accused by Whittaker Chambers);
- 54. J. PETERS, aka Alexander STEVENS) (alleged spy);
- \*55. John PEURIFOY (former State Department official);
- 56. George PIGMAN (accused by Whittaker Chambers);
- \*57. William Ward PIGMAN (accused by Whittaker Chambers);
- 58. Richard Howell POST (accused by Whittaker Chambers);
- \*59. Lee PRESSMAN (accused by Whittaker Chambers);
- 60. Franklin Victor RENO (accused by Whittaker Chambers);
- 61. William ROSEN (accused by Whittaker Chambers);
- 62. George ROULHAC (testified at Hiss trial);
- 63. R. R. RUNRICH (former German spy);
- 64. Louis J. Russell

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- \*65. Francis B. SAYRE (former State Department official);
- 66. Horace W. SCHMAHL;
- \*67. Meyer SCHAPIRO (New York art historian);
- 68. John Loomis SHERMAN (former teacher, California resident, accused by Whittaker Chambers);
- 69. Abraham George SILVERMAN (former government official accused by Whittaker Chambers)
- 70. William SPIEGEL (Baltimore resident accused by Whittaker Chambers);
- 71. Anna Stiffman SPIEGEL (wife of William Spiegel);
- 72. Robert STRIPLING (HUAC investigator);
- 73. Alexander ULANOV (alleged soviet spy);
- 74. Ludwig ULLMANN (former government official accused by Whittaker Chambers);
- 75. Henry Julian WADLEIGH (former State Department official);
- 76. Harold WARE (former government official, died 1935);
- 77. Nathaniel WEYL (writer who accused Alger Hiss of Communist Party membership);
- 78. William A. WHEELER (HUAC investigator);
- \*79. Harry Dexter WHITE (former government official who died in August, 1948);
- \*80. Nathan WITT (ex-Communist Party member);
- 81. David ZIMMERMAN, aka David Carpenter (ex-Communist Party member).
- 82. The person code-named "ALES," including records indexed under his real name, any pseudonyms, nicknames, aliases, and code name.

Please search the General Indices to your Central Records System for all main files and "see" references. Please also search the ELSUR indices and any special indices or other indices maintained by any division, section, office, bureau, or other component of the FBI.

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With respect to your search for ELSUR records, Mr. Kisseloff wants not only any records pertaining to any electronic surveillance that the above-referenced persons were the "targets" of electronic surveillance, but also any "overhears" or "mentions" pertaining to them.

Additionally, your search should include any records pertaining to the above-reference subjects maintained in any divisional files, and any files located in any section, office, bureau or other component of the FBI. Any records presently or formerly located in any field office safe are also within the scope of this request.

All searches should be conducted under the subjects' names, nicknames and aliases and all logical variations thereof, including all buildups and breakdowns.

If records pertaining to the subjects of this request exist or are likely to exist but cannot be located by a search of your indices, please conduct a search using whatever other search methods you have at your disposal that may result in the retrieval of such records.

This request also includes numbered and lettered subfiles, 1A envelopes, enclosures behind files ("EBFs"), file covers, Bulky Exhibits ("Bulkies"), control files, and "JUNE" records or files. Kisseloff wants all records produced with the administrative markings and all reports to include the administrative pages. He wants all pages released regardless of the extent of excising, even if all that remains are the date, stationary headings or administrative markings. If you claim that records responsive to this request have been destroyed, please provide records documenting said destruction.

If any document contains material on the back of any pages, such as a date stamp, please provide any such pages.

With respect to "see" references, Mr. Kisseloff wants each document which contains material responsive to the requests in its entirety. That is, Mr. Kisseloff wants the whole of any document which contains any material responsive to these requests, not just the portion which pertains to the subject of the request.

Mr. Kisseloff has approximately twenty-five years of experience as a journalist and historian. He is the author of several books, including *You Must Remember This: An Oral History of Manhattan from the 1890s to World War II*, published by Harcourt Brace Jovanovich, and *The Box: An Oral History of the 1920s to 1961*, published by Viking Press. The documents he is currently seeking are for a book on the Alger Hiss case. Mr. Kisseloff is Managing Editor of a website sponsored by New York University, [algerhiss.com](http://algerhiss.com). Although a number of books on the Hiss case have

been written, he intends to take a comprehensive look at the case based on the new material garnered from this case and previous releases from all sources, including the files of the former Soviet Union.

As a representative of the news media who expects to use the information sought in writing which will be disseminated to the public, Mr. Kisseloff cannot be charged search fees. See 5 U.S.C. § 552(A)(4)(A)(ii)(II).

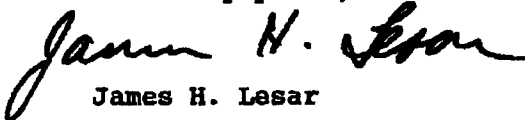
Materials on the subjects of this request will necessarily shed light on the operations or activities of the government. Among other things, they will reveal the extent, nature, and duration of the FBI's interest in such persons and in Alger Hiss and the reasons therefor, the thoroughness of the FBI's investigation, the reliability of its conclusions, and so forth. Because the information Mr. Kisseloff seeks is likely to contribute significantly to public understanding of such operations and activities, he is entitled to a waiver of copying costs. Pursuant to 5 U.S.C. § 552(a)(4)(a)(iii), he hereby requests that he be granted such a waiver.

The term "records" as used herein includes all form of documentary materials, including but not limited to written records, records maintained in an electronic format, audio and video tapes, movie films, photographs, computer disks, etc.

In addition to the records specified above, Mr. Kisseloff also requests:

- (a) all index references to each of the subjects listed above;
- (b) all previous Freedom of Information Act requests for records on each of the subjects listed above;
- (c) the worksheets generated in processing this request or any prior request for records on the subjects of these requests;
- (d) all search slips of other records which document the search(es) undertaken in response to this or any prior request for records pertaining to any of the subjects listed above.

Sincerely yours,

  
James H. Lesar



(Holtzman 5-Nat'l  
New York Times (1977) Copyright, Feb. 17,  
1978)

(Holtzman 5-Nat'l  
New York Times (1977) Copyright, Feb. 17,  
1978)

ABT, JOHN

(A)

### Deaths

Abt, John  
Adams, John  
Allen, Duval  
Baer, Ruth  
Bessler, Zile  
Berita, M.  
Bernstein, D.  
Chung, Ping-keung  
Cook, Grace  
Dalmas, Harry  
Davis, Julius  
DuCano, Pierre  
Durgin, Therese  
Esposito, Helen  
Fallace, Harry  
Fatzler, Fred  
Ferrara, Charles  
Frank, Zertine  
Gartinkat, Sadie  
Geller, Jennie  
Glickhouse, L.  
Grossner, Emma  
Heard, Francis  
Horowitz, Rose  
Hurley, Michael  
Hvams, Ronald

Kelly, Edward  
Klein, Joseph  
Kohn, Samuel  
Lehner, David  
Mahoney, Carl  
Mazzotti, Mel  
Morgan, P.  
Mossman, Se  
Muma, John  
O'Hearn, Mar  
Pisak, Elise  
Pisak, Ralph  
Polak, Edith  
Richards, F.  
Richman, Na  
Scott, Michael  
Shepard, Jir  
Sosa, Elisebe  
Solomon, Be  
Soto, Carl  
Spert, Wall  
Thomas, Val  
Vierler, Ann  
Weeks, Virg  
Westman, Hc

DAVIS—Julius, D.D.S. Died Feb. 1981, beloved husband of the Blanche Davis, devoted father of Edward Davis, and Ruth Davis, brother of Carl Hammerling, the grandfather of Esther, and Daniel, and Tom, Adam. Aton. Services Thursday Feb. 1981 at 10 A.M. at "The River" for Rockaway.

DAVIS—Julius, D.D.S. Temple of Lawrence, L.I. mourns the loss of its member, Dr. Julius Davis, loved father of Ruth Bartle, Edward Davis, dear grand-son and brother. We extend our sympathy to the bereaved family. Alvin J. Baron, Pres. John S. Bar, Secy.

DUCCAMP—Pierre, MD. The staff of Franklin General H. mourns the passing of their colleague. Our heartfelt sympathy extended to his family and friends. Alvin Granber, President, Medical.

DURGIN—Therese Keresov, D-13 in Manhasset, Nassau, who vacation with family. Survived husband Dan, daughter Hillary, Rev. son William Keresov, 11, brother Thomas Keresov, F. 11 A.M., Tuesday, Feb. 24, James' Church, Madison Avenue, New York City. In flowers, contributions to St. Charles Services to Family. Children would be appreciated.

ESPOSITO—Helen (nee Susu) loving mother of Karen, the daughter of Mollie and M. Susman, dear sister of Allen vice Friday, 11 A.M. at "The side," 7th Street and Amster Avenue.

FALLACE—Harry P. of Ridge N.J. on Tuesday, February 17, beloved husband of the late Rebecca Fallace, formerly of York City. Funeral service day, February 21 at the Nativity Church, 9:45 A.M. and interment at Gate of Heaven Cemetery, Hawthorne. New Friends may call at the Funeral Home Thursday evening, 2-4 P.M. and 7-9 P.M.

FATZLER—Fred G. On Tuesday, February 17, 1981 of Madison and Palm Beach, FL. Husband of Emily M. (nee Conant), Fat Mrs. Roderick McRae, Jr. of William Fatzler and Mrs. Hina Reynolds. Also survive grandsons. Funeral service, Smith & Smith (Suburban) of 1115 Ave. Springfield, N.J. on February 20th at 11 A.M.

FERRARA—Charles, beloved husband of Margaret, devoted father of Anthony and Michael, loving grandfather of Michael, deceased at Burdette and Son, 811 North Avenue, Bronx. Funeral service, Sacred Heart Church, Rochelle, N.Y., Friday, 11 A.M.

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JAMES H. LESAR  
ATTORNEY AT LAW  
1003 K STREET, N.W., SUITE 640  
WASHINGTON, D.C. 20001  
TELEPHONE (202) 393-1921  
FAX (202) 393-7310

September 11, 2006

Mr. David M. Hardy, Chief  
Freedom of Information/Privacy Acts  
Section  
Office of Public and Congressional Affairs  
Federal Bureau of Investigation  
Washington, D.C. 20535

Re: Alger Hiss, Whittaker Chambers, et al.

Dear Mr. Hardy:

In your March 5, 2005, letter to me regarding the above-referenced request you raised an issue concerning the fact that my client, Mr. Jeffrey Kisseloff, had not provided proof of death or other vital information concerning many of the subjects of his May 6, 2004 Freedom of Information Act request. Attached hereto are documents evidencing such information for the following subjects of the request:

Appel, David T.  
Bang, Frank  
Barnes, Joseph F.  
Bentley, Elizabeth  
Bialek, Benjamin  
Bohlen, Charles  
Booth, Frances, Oneida  
Boucot, Joseph Ronald  
Budenz, Louis  
Bullitt, William C.  
Bullitt, William Marshall  
Cantwell, Robert  
Cassidy, Harry E.  
Catlett, Burnetta P.  
Catlett, James  
Catlett, Raymond  
Chambers, Esther Shemits  
Cherner, Leon  
Collins, Henry  
Cowley, Malcolm  
Crane, William Edward  
Cronin, John F.  
Cronier, Julia Francis  
Cross, Claudia B.  
Darlington, Charles F., Jr.  
Davis, Lucy Elliott

Exhibit 4

DeLashmutt, Lyman  
Dickey, John Sloan  
Dirba, Charles  
Donovan, William  
Doud, Donald  
Dosenberg, Nicholas  
Duggan, Laurence  
Dulles, John Fortas  
Duvall, Frank E.  
Ehrlich, Evelyn  
Eichelberger, Clara M.  
Fearon, Edwin  
Feis, Herbert  
Field, Frederick Vanderbilt  
Field, Noel  
Foote, Wiler  
Garlin, Sender  
Gertler, Henry J.  
Glasser, Harold  
Gouzenko, Igor  
Green, Joseph C.  
Halper, Albert  
Helfrich, Karl  
Herald, Leon  
Herbst, Josephine  
Herrmann, John  
Hilton, Ordway  
Hiss, Priscilla  
Hornbeck, Dr. Stanley K.  
Houston, Charles Hamilton  
Hutchins, Grace  
Intrator, Michael  
Jessip, Phillip C.  
Kaufman, Samuel H.  
Kohlberg, Alred  
Kramer, Charles  
Kreiger, Samuel  
Kunze, Adam  
Lamb, Dean Ivan  
Lane, Chester T.  
Levine, Isaac Don  
Levine, Nathan L.  
Lieber, Maxim  
Lincoln, Eunice  
Lockey, Ira  
Lore, Ludwig  
Mandel, Benjamin  
Marburg, William L.  
Matthews, H. Freeman  
McQueen, Stafford  
Mensch, Samuel  
Murphy, Raymond E.

Murray, Henry H.  
Newcomb, Anna B.  
Nicholson, Dr. Maragret Mary  
Nixon, Pat  
Nixon, Richard M.  
Omholt, Mrs. Ella Reeve ("Mother Bloor")  
Pasnolsky, Dr. Lee  
Perlo, Victor  
Pickett, Clarence E.  
Paurifoy, John E.  
Pigman, George L.  
Pigman, Dr. William Ward  
Pressman, Lee  
Reno, Franklin Victor  
Rochester, Anna  
Rosen, William  
Roulhac, Geroge  
Rumrich, Guenther  
Russell, Louis  
Schapiro, Meyer  
Schmahl, Horace  
Schmitt, Joseph  
Shaw, G. Howland  
Sherman, John Loomis  
Silverman, Abraham George  
Silverman, Nathan Gregory  
Solow, Herbert  
Spiegel, Anna  
Spiegel, William  
Spier, Frankelin  
Stein, Elbridge, W.  
Stettinius, Edward R.  
Straight, Michael Whitney  
Stripling, Robert E.  
Stryker, Lloyd Paul  
Swope, Gerard, Jr.  
Touloukian, Edward  
Trachtenberg, Alexander  
Ullmann, William Ludwig  
Wadleigh, Henry Julian  
Ware, Harold  
White, Harry Dexter  
Willert, Capt. Paul Odo  
Witt, Nathan

If you have any questions, please contact me.

Also, I would appreciate it if you would advise me of the status of this request.

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Sincerely yours,

*James H. Lesar*  
James H. Lesar

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4

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FAX (202) 393-7310

October 22, 2008

Mr. David M. Hardy  
Section Chief  
Records Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Washington, D.C. 20535

Re: FOIPA No. 1072367;  
( John Abt); FOIPA No.  
1076027 (Carl Bincer

Dear Mr. Hardy:

By letters dated September 23 and September 8, 2008, you demanded payment of copying fees for materials responsive to the above-referenced requests. These two requests are part of a larger series of requests submitted by my client, Mr. Jeff Kisseloff, in connection with his scholarly study of the Alger Hiss case. Pursuant to the Freedom of Information Act, 5 U.S.C. 552(a)(4)(A)(3), Mr. Kisseloff seeks a public interest fee waiver for these materials.

You regulations provided that in order to obtain a fee waiver, a requester must show (1) that "[d]isclosure of the information is in the public interest because because it is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) that "[d]isclosure of the information is not primarily in the commercial interest of the requester." 28 C.F.R. § 16.11(k)(1)(i) and (ii).

With respect to the first requirement, the Alger Hiss trial was one of the most important in our country's history. Its impact on our country's politics in the 1940s and 1950s and even up until today cannot be overstated. Information from the records Mr. Kisseloff seeks will increase our knowledge of the government's operations and activities with regard to this event. In particular, it will help show how the government built its case against Hiss, and what motivated its actions.

With respect to the second requirement, whether the information is primarily in the commercial interest of the requester, Mr. Kisseloff is an historian. His sole interest is in learning the truth behind the case.

Exhibit 5

Your regulations set forth four factors to be considered in evaluating whether a requester has met the first requirement. The first is [w]hether the subject of the requested records 'concerns the operations or activities of the government.'" The records sought specifically involve the operations of government agencies preparing the case against Alger Hiss. These agencies include the FBI, the CIA, Naval Intelligence and others that were active in surveillance or evidence-gathering in connection with the charges against Alger Hiss.

The second factor employed in evaluating the first requirement concerns whether the information is likely to contribute to the public understanding of government operations or activities. The records Mr. Kisseloff has requested and has begun to receive contain new information that has not previously been released, including documents that were previously heavily redacted. This new disclosure will provide much new and needed information about the government's actions regarding the subjects of my requests and others who appear in their files, whether it involves surveillance, research about their associates or the finding of any information that sheds light on the case.

The third factor concerns whether the information disclosed will contribute to the understanding of a reasonably broad audience of persons interested in the subject. Books about post-World War II America and the 1950s are still enormously popular in America. The period is widely studied in colleges and universities across the country. Television networks regularly feature historical documentaries covering this period, and there are hundreds, if not thousands, of Web sites devoted to events of this era as well.

The fourth factor is whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The Freedom of Information Act gives access to information that simply cannot be gotten anywhere else. FBI files, for example, contain interviews with participants who are long dead. The details of the Bureau's investigations cannot be learned from any other source.

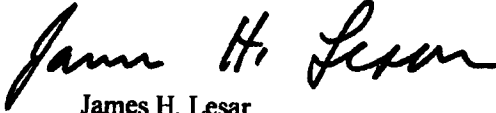
In determining whether the second fee waiver requirement is met, consideration is to be given, first, to the "existence and magnitude of a commercial interest." Mr. Kisseloff's commercial interest is secondary to his scholarly historical interest. He has been researching the Hiss case for nearly thirty years. At this point, nothing could fairly compensate him for the time he has put in. He continues his studies because commercial benefit is not at all his primary focus.

Secondly, consideration is given to the comparative magnitude of the commercial and public interests in disclosure. Mr. Kisseloff has not sought the requested records to supply "data brokers" or to "compile and market government information for direct economic return." All of the records that he obtains will eventually be made freely available to the public.

In light of these considerations, Mr. Kisseloff is clearly entitled to a waiver of copying costs for the records he has sought.

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Sincerely yours,

  
James H. Lesar